

PLEA AGREEMENT ROUTING SLIP

USAO NO: 2002R00405

Date: September 27, 2004

From: Kim Pedersen

AUSA/SAUSA

Defendant: Lam Nguyen CHAU

Case No: 1:04CR84

Date Plea Scheduled:

☐ Pre-Indictment Plea ☒ Post-Indictment Plea

1. Optional Sentences or Paragraphs Deleted:

☐ Detention ☐ Forfeiture
☐ Substantial Assistance ☐ Cooperation
☐ Immigration ☒ Tax Language
☐ No Other Conditions

2. Modifications or Additions

Page No. Paragraph No.

3. Is Restitution Applicable:

☐ Yes ☐ No If yes, are victims fully and correctly identified and the amount due each stated within plea agreement: ☐ Yes ☐ No

4. Defendant has agreed to plead guilty to the most serious, readily provable offense.

☒ YES ☐ NO

5. Defendant has agreed to plead guilty to a readily provable gun count.

☐ Not Applicable, the defendant did not use, carry or possess a firearm
☒ YES ☐ NO

6. Stipulation(s) have been reached regarding the following guideline factors.

(Check those that apply):

☐ Drug quantity ☐ [N/A] Gun
☒ Role ☒ [x] Acceptance
☐ [n/a] Safety Valve ☐ Loss
☐ Other (list):

7. Stipulated guideline factors are the most serious, readily provable guideline factors applicable to the defendant's conduct.

☒ YES ☐ NO

8. An agreement not to file an information regarding prior convictions has been reached.

☒ Not Applicable ☐ YES ☐ NO

9. Victim Financial Information Memo completed.

☐ YES ☐ NO

10. Defendant Financial Information Memo completed.

☐ YES ☐ NO

(Reminder: E-mail your final statement of facts to Sam Dibbley once the plea has been taken before the Judge)

PLEA AGREEMENT APPROVAL

To: _____
Unit Supervisor

Approved: _____
Date: _____

To: **Robert A. Spencer**
Chief, Criminal Division
or Kevin V. Di Gregory
Deputy Chief, Criminal Division

[For Acts of Terrorism, National Security, RICO, Corporate Fraud, Public Corruption, Homicide, or Special Public or Agency Interest]

Approved: _____
Date: _____

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:04CR084
)	
LAM NGUYEN CHAU)	Judge Hilton
)	
Defendant.)	

PLEA AGREEMENT

Paul J. McNulty, United States Attorney for the Eastern District of Virginia, James L. Trump and Kimberly R. Pedersen, Assistant United States Attorneys, the defendant, LAM NGUYEN CHAU, and the defendant's counsel, Mark J. Petrovich and Matthew A. Wartel, have entered into an agreement pursuant to Rule 11 of the Federal Rules of Criminal Procedure. The terms of the agreement are as follows:

1. Offense and Maximum Penalties

The defendant agrees to plead guilty to Count 2 of the pending indictment charging the defendant with murder in the course of a firearms offense, in violation of Title 18, United States Code, Sections 924(c), 924(j) and 2. The maximum penalties for this offense are life imprisonment, a fine of \$250,000, full restitution, a special assessment, and at least five years of supervised release. The defendant understands that this supervised release term is in addition to any prison term the defendant may receive, and that a violation of a term of supervised release could result in the defendant being returned to prison for the full term of supervised release.

2. Detention Pending Sentencing

The defendant understands that this case is governed by Title 18, United States Code, Sections 3143(a)(2) and 3145(c). These provisions provide that a judicial officer shall order that a person who has pled guilty to an offense of this kind be detained unless there are statutory justifications why such person's detention would not be appropriate.

3. Factual Basis for the Plea

The defendant will plead guilty because the defendant is in fact guilty of the charged offense. The defendant admits the facts set forth in the statement of facts filed with this plea agreement and agrees that those facts establish guilt of the offense charged beyond a reasonable doubt. The statement of facts, which is hereby incorporated into this plea agreement, constitutes a factual stipulation for purposes of Section 1B1.2(a) of the Sentencing Guidelines.

4. Assistance and Advice of Counsel

The defendant is satisfied that the defendant's counsel have rendered effective assistance. The defendant understands that by entering into this agreement, defendant surrenders certain rights as provided in this agreement. The defendant understands that the rights of criminal defendants include the following:

- a. the right to plead not guilty and to persist in that plea;
- b. the right to a jury trial;
- c. the right to be represented by counsel – and if necessary have the court appoint counsel – at trial and at every other stage of the proceedings; and

- d. the right at trial to confront and cross-examine adverse witnesses, to be protected from compelled self-incrimination, to testify and present evidence, and to compel the attendance of witnesses.

5. Waiver of Right to Jury Trial on Sentencing Factors.

The defendant, by entering this plea, also waives the right to have facts that determine the offense level under the Sentencing Guidelines (including facts that support any specific offense characteristic or other enhancement or adjustment) (1) charged in the indictment, (2) proven to a jury, or (3) proven beyond a reasonable doubt. The defendant explicitly consents to be sentenced pursuant to the applicable Sentencing Guidelines, to have the sentence based on facts to be established by a preponderance of the evidence before the sentencing judge, and to allow the Court to consider any reliable evidence without regard to its admissibility at trial. The defendant explicitly acknowledges that his plea to the charged offense authorizes the Court to impose any sentence that is authorized by the Sentencing Guidelines up to and including the maximum sentence set forth in the United States Code. The defendant also waives all challenges to the constitutionality of the Sentencing Guidelines.

6. Guideline Stipulations

The United States and the defendant stipulate and agree to the following guideline factors: (1) the base offense level for the offense of conviction is a level 43, pursuant to U.S.S.G. § 2A1.1 for first degree murder; and (2) the defendant qualifies for a two-level reduction in his offense level for minor role in the offense, pursuant to U.S.S.G. § 3B1.2(b). The United States and the defendant stipulate and agree that defendant has assisted the government in the investigation and prosecution of his own misconduct by timely notifying authorities of his intention to enter a plea of guilty,

thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently. If the defendant qualifies for a two-level decrease in offense level pursuant to U.S.S.G. § 3E1.1(a), and the offense level prior to the operation of that subsection is a level 16 or greater, the government agrees to file, pursuant to 18 U.S.C. § 994 and U.S.S.G. § 3E1.1(a), a motion prior to sentencing for an additional one-level decrease in the defendant's offense level. The defendant understands that these stipulations and agreements as to guideline factors are not binding on the Probation Office or the Court.

7. Role of the Court and the Probation Office

The defendant understands that the Court has jurisdiction and authority to impose any sentence within the statutory maximum described above but that the Court will determine the defendant's actual sentence in accordance with the Sentencing Guidelines and Policy Statements. The defendant understands that the Court has not yet determined a sentence and that any estimate of the probable sentencing range under the sentencing guidelines the defendant may have received from the defendant's counsel, the United States, or the Probation Office, is a prediction, not a promise, and is not binding on the United States, the Probation Office, or the Court. The United States makes no promise or representation concerning what sentence the defendant will receive, and the defendant cannot withdraw a guilty plea based upon the actual sentence. Notwithstanding the foregoing, the parties agree that there exists no aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the Guidelines that should result in a sentence different from the range determined by the Court. Accordingly, the parties agree not to seek or support any departure from or sentence outside of the applicable guideline range for any reason not set out explicitly in this agreement. The United States

and the defendant agree that this stipulation does not apply to a motion by the defendant for a downward departure from the otherwise applicable sentencing guidelines for Voluntary Disclosure of Offense, pursuant to U.S.S.G. § 5K2.16. The defendant understands that the United States may oppose any such motion.

8. Waiver of Appeal and Review

The defendant also understands that Title 18, United States Code, Section 3742, affords a defendant the right to appeal the sentence imposed. Nonetheless, the defendant knowingly waives the right to appeal the conviction and any sentence within the maximum provided in the statute of conviction (or the manner in which that sentence was determined) on the grounds set forth in Title 18, United States Code, Section 3742, or on any ground whatsoever, in exchange for the concessions made by the United States in this plea agreement. This agreement does not affect the rights or obligations of the United States as set forth in Title 18, United States Code, Section 3742(b). The defendant also hereby waives all rights, whether asserted directly or by a representative, to request or receive from any department or agency of the United States any records pertaining to the investigation or prosecution of this case, including without limitation any records that may be sought under the Freedom of Information Act, Title 5, United States Code, Section 552, or the Privacy Act, Title 5, United States Code, Section 552a.

9. Special Assessment

Before sentencing in this case, the defendant agrees to pay a mandatory special assessment of one hundred dollars (\$100.00) per count of conviction.

10. Restitution

The defendant agrees to pay restitution to the victims of the offense in an amount to be determined by the Court at sentencing.

11. Payment of Monetary Penalties

The defendant understands and agrees that, pursuant to Title 18, United States Code, Section 3613, whatever monetary penalties are imposed by the Court will be due and payable immediately and subject to immediate enforcement by the United States as provided for in Section 3613. Furthermore, the defendant agrees to provide all of his financial information to the United States and the Probation Office and, if requested, to participate in a pre-sentencing debtor's examination. If the Court imposes a schedule of payments, the defendant understands that the schedule of payments is merely a minimum schedule of payments and not the only method, nor a limitation on the methods, available to the United States to enforce the judgment. If the defendant is incarcerated, the defendant agrees to participate in the Bureau of Prisons' Inmate Financial Responsibility Program, regardless of whether the Court specifically directs participation or imposes a schedule of payments.

12. Immunity from Further Prosecution in this District

The United States will not further criminally prosecute the defendant in the Eastern District of Virginia for the specific conduct described in the indictment or statement of facts.

13. Defendant's Cooperation

The defendant agrees to cooperate fully and truthfully with the United States, and provide all information known to the defendant regarding any criminal activity as requested by the government. In that regard:

- a. The defendant agrees to testify truthfully and completely at any grand juries, trials or other proceedings.
- b. The defendant agrees to be reasonably available for debriefing and pre-trial conferences as the United States may require.
- c. The defendant agrees to provide all documents, records, writings, or materials of any kind in the defendant's possession or under the defendant's care, custody, or control relating directly or indirectly to all areas of inquiry and investigation.
- d. The defendant agrees that, upon request by the United States, the defendant will voluntarily submit to polygraph examinations to be conducted by a polygraph examiner of the United States' choice.
- e. The defendant agrees that the Statement of Facts is limited to information to support the plea. The defendant will provide more detailed facts relating to this case during ensuing debriefings.
- f. The defendant is hereby on notice that the defendant may not violate any federal, state, or local criminal law while cooperating with the government, and that the government will, in its discretion, consider any such violation in evaluating whether to file a motion for a downward departure or reduction of sentence.
- g. Nothing in this agreement places any obligation on the government to seek the defendant's cooperation or assistance.

14. Use of Information Provided by the Defendant Under This Agreement

Pursuant to Section 1B1.8 of the Sentencing Guidelines, no truthful information that the defendant provides pursuant to this agreement will be used to enhance the defendant's guidelines range. The United States will bring this plea agreement and the full extent of the defendant's cooperation to the attention of other prosecuting offices if requested. Nothing in this plea agreement, however, restricts the Court's or Probation Office's access to information and records in the possession of the United States. Furthermore, nothing in this agreement prevents the government in any way from prosecuting the defendant should the defendant provide false, untruthful, or perjurious information or testimony or from using information provided by the defendant in furtherance of any forfeiture action, whether criminal or civil, administrative or judicial.

15. Prosecution in Other Jurisdictions

The United States Attorney's Office for the Eastern District of Virginia will not contact any other state or federal prosecuting jurisdiction and voluntarily turn over truthful information that the defendant provides under this agreement to aid a prosecution of the defendant in that jurisdiction. Should any other prosecuting jurisdiction attempt to use truthful information the defendant provides pursuant to this agreement against the defendant, the United States Attorney's Office for Eastern District of Virginia agrees, upon request, to contact that jurisdiction and ask that jurisdiction to abide by the immunity provisions of this plea agreement. The parties understand that the prosecuting jurisdiction retains the discretion over whether to use such information.

16. Defendant Must Provide Full, Complete and Truthful Cooperation

This plea agreement is not conditioned upon charges being brought against any other individual. This plea agreement is not conditioned upon any outcome in any pending investigation.

This plea agreement is not conditioned upon any result in any future prosecution which may occur because of the defendant's cooperation. This plea agreement is not conditioned upon any result in any future grand jury presentation or trial involving charges resulting from this investigation. This plea agreement is conditioned upon the defendant providing full, complete and truthful cooperation.

17. Motion for a Downward Departure or Reduction of Sentence

The parties agree that the United States reserves the right to seek any departure from the applicable sentencing guidelines, pursuant to Section 5K1.1 of the Sentencing Guidelines and Policy Statements, or any reduction of sentence pursuant to Rule 35(b) of the Federal Rules of Criminal Procedure, if, in its sole discretion, the United States determines that such a departure or reduction of sentence is appropriate.

18. Breach of the Plea Agreement and Remedies

This agreement is effective when signed by the defendant, the defendant's attorneys, and an attorney for the United States. The defendant agrees to entry of this plea agreement at the date and time scheduled with the Court by the United States (in consultation with the defendant's attorney). If the defendant withdraws from this agreement, or commits or attempts to commit any additional federal, state or local crimes, or intentionally gives materially false, incomplete, or misleading testimony or information, or otherwise violates any provision of this agreement, then:

- a. The United States will be released from its obligations under this agreement, including any obligation to seek a downward departure or a reduction in sentence. The defendant, however, may not withdraw the guilty plea entered pursuant to this agreement;

- b. The defendant will be subject to prosecution for any federal criminal violation, including, but not limited to, perjury and obstruction of justice, that is not time-barred by the applicable statute of limitations on the date this agreement is signed. Notwithstanding the subsequent expiration of the statute of limitations, in any such prosecution, the defendant agrees to waive any statute-of-limitations defense; and
- c. Any prosecution, including the prosecution that is the subject of this agreement, may be premised upon any information provided, or statements made, by the defendant, and all such information, statements, and leads derived therefrom may be used against the defendant. The defendant waives any right to claim that statements made before or after the date of this agreement, including the statement of facts accompanying this agreement or adopted by the defendant and any other statements made pursuant to this or any other agreement with the United States, should be excluded or suppressed under Fed. R. Evid. 410, Fed. R. Crim. P. 11(f), the Sentencing Guidelines or any other provision of the Constitution or federal law.

Any alleged breach of this agreement by either party shall be determined by the Court in an appropriate proceeding at which the defendant's disclosures and documentary evidence shall be admissible and at which the moving party shall be required to establish a breach of the plea agreement by a preponderance of the evidence. The proceeding established by this paragraph does not apply, however, to the decision of the United States whether to file a motion based on "substantial assistance" as that phrase is used in Rule 35(b) of the Federal Rules of Criminal

Procedure and Section 5K1.1 of the Sentencing Guidelines and Policy Statements. The defendant agrees that the decision whether to file such a motion rests in the sole discretion of the United States.

19. Nature of the Agreement and Modifications

This written agreement constitutes the complete plea agreement between the United States, the defendant, and the defendant's counsel. The defendant and his attorney acknowledge that no threats, promises, or representations have been made, nor agreements reached, other than those set forth in writing in this plea agreement, to cause the defendant to plead guilty. Any modification of this plea agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

PAUL J. MCNULTY
UNITED STATES ATTORNEY

By: _____
James L. Trump
Kimberly R. Pedersen
Assistant United States Attorneys

APPROVED:

Robert Spencer
Chief, Criminal Division

Date: _____

Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending criminal information. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which

may apply in my case. I have read this plea agreement and carefully reviewed every part of it with my attorney. I understand this agreement and voluntarily agree to it.

Date: _____

Lam Nguyen Chau
Defendant

Defense Counsel Signature: I am counsel for the defendant in this case. I have fully explained to the defendant the defendant's rights with respect to the pending information. Further, I have reviewed the provisions of the Sentencing Guidelines and Policy Statements and I have fully explained to the defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the defendant. To my knowledge, the defendant's decision to enter into this agreement is an informed and voluntary one.

Date: _____

Mark J. Petrovich
Counsel for the Defendant

Date: _____

Matthew A. Wartel
Counsel for the Defendant

U. S. DEPARTMENT OF JUSTICE
Statement of Special Assessment Account

This statement reflects your special assessment only. There may be other penalties imposed at sentencing.

ACCOUNT INFORMATION	
CRIM. ACTION NO.:	1:04CR084
DEFENDANT'S NAME:	Lam Nguyen Chau
PAY THIS AMOUNT:	\$100

INSTRUCTIONS:

1. **MAKE CHECK OR MONEY ORDER PAYABLE TO:**
CLERK, U.S. DISTRICT COURT
2. **PAYMENT MUST REACH THE CLERK'S OFFICE BEFORE YOUR SENTENCING DATE**
3. **PAYMENT SHOULD BE SENT TO:**

	In person (9 AM to 4 PM)	By mail:
Alexandria cases:	Clerk, U.S. District Court 401 Courthouse Square Alexandria, VA 22314	
Richmond cases:	Clerk, U.S. District Court 1000 E. Main Street, #307 Richmond, VA 23219	
Newport News cases:	Clerk, U.S. District Court 101 - 25 th Street, 2 nd Floor Newport News, VA 23607	Clerk, U.S. District Court P. O. Box 494 Newport News, VA 23607
Norfolk cases:	Clerk, U.S. District Court 600 Granby Street Norfolk, VA 23510	

4. **INCLUDE DEFENDANT'S NAME ON CHECK OR MONEY ORDER**
5. **ENCLOSE THIS COUPON TO INSURE PROPER and PROMPT APPLICATION OF PAYMENT**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

UNITED STATES OF AMERICA)	
)	
v.)	CRIMINAL NO. 1:04CR084
)	
LAM NGUYEN CHAU)	Judge Hilton
)	
Defendant.)	

STATEMENT OF FACTS

Were this matter to go to trial, the United States of America would prove the following facts beyond a reasonable doubt:

1. The defendant, LAM NGUYEN CHAU, was born on February 16, 1976 in Vietnam and came to the United States in 1993.

2. In 1997, the defendant was associated with an Asian gang known as “DF,” also known as “Dragon Family,” or “Dragon Fly.” The defendant was aware that members of DF were engaged in criminal activities, including the distribution of cocaine, robbery and other crimes of violence. The defendant agrees that the United States would prove that DF, through its members and associates, was engaged in racketeering activity within the meaning of Title 18, United States Code, Section 1959, in the Eastern District of Virginia and elsewhere.

3. On or about January 26, 1997, at the Hi Au pool hall in the Eden Shopping Center in Falls Church, Virginia, within the Eastern District of Virginia, Thiet Phan was involved in a fight with Long Hung Nguyen, the manager of the pool hall, and others, including Long’s brother. Long Nguyen was known to DF as a member of the “Hi Au Boys” or the “Eden Boys,” a rival

gang. The defendant, who was not present at the fight, saw Thiet Phan at the Eden Center soon after the fight and saw that Phan was bleeding.

4. After the fight, the defendant and Thiet Phan went to a nearby apartment and met up with Cuong Gia Le, another DF member (hereafter, DF-1) and others. While there, Thiet Phan said that he had just been beaten up by Long Nguyen at the pool hall. DF-1, who himself had been previously beaten up by Long Nguyen, stated that he wanted to go to the pool hall and kill Long Nguyen. During this meeting, DF-1, along with Cuong Le, decided and agreed that they would return to the Hi Au pool hall and kill Long Nguyen. DF-1 and Cuong Le convinced Thiet Phan to join them.

5. While still at the apartment, the defendant drove DF-1, Cuong Le and Thiet Phan to the Hi Au pool hall in a van that belonged to one of the individuals at the apartment. The defendant, as an associate of DF, felt pressured to do this. Nevertheless, the defendant voluntarily participated in this crime. The four occupants of the van, including the defendant, had firearms accessible to them that DF-1 had previously obtained in Louisiana. After getting into the car and before driving to the Hi Au, the defendant drove the group to several convenience stores to purchase ski masks. The defendant, accompanied by DF-1, eventually purchased four ski masks at a 7-11 store.

6. Thereafter, the defendant drove the van back to the Eden Center and parked at the rear entrance of the pool hall. The defendant remained inside the van where there was a firearm while Thiet Phan, Cuong Gia Le and DF-1 armed themselves with guns and entered the rear door of the pool hall wearing ski masks. Thiet Phan, Cuong Gia Le and DF-1, who were all wearing ski masks, shot and killed Long Nguyen inside the Hi Au in retaliation for the earlier beatings of Thiet Phan and the previous beating of DF-1.

7. After the shooting, Thiet Phan, Cuong Le and DF-1 ran out the back door of the pool hall and returned to the van wearing their ski masks. The defendant drove Cuong Le, DF-1 and Thiet Phan to Washington, D.C., and assisted them in hiding the firearms in the woods. One or two days after the shooting, DF-1 retrieved the firearms from the woods.

8. The acts described above were done willfully and knowingly and with the specific intent to violate the law, and not by accident, mistake, inadvertence, or other innocent reason.

Respectfully submitted,

PAUL J. MCNULTY
UNITED STATES ATTORNEY

By: _____
James L. Trump
Kimberly Riley Pedersen
Assistant U.S. Attorney

After consulting with my attorney and pursuant to the plea agreement entered into this day between the defendant, LAM NGUYEN CHAU, and the United States, I hereby stipulate that the above Statement of Facts is true and accurate, and that had the matter proceeded to trial, the United States would have proved the same beyond a reasonable doubt.

LAM NGUYEN CHAU
Defendant

We are LAM NGUYEN CHAU'S attorneys. We have carefully reviewed the above Statement of Facts with him. To our knowledge, his decision to stipulate to these facts is an informed and voluntary one.

Mark J. Petrovich
Attorney for LAM NGUYEN CHAU

Matthew A. Wartel
Attorney for LAM NGUYEN CHAU